

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Court House,
Boonville, IN
Monday, January 14, 2013, 6:00 P.M.

MEMBERS PRESENT: Guy Gentry, Mike Moesner, Brad Overton, Rick Reid, Jeff Valiant and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Sheila Lacer and Molly MacGregor, staff.

MEMBERS ABSENT: Amanda Mosiman

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of allegiance.

ELECTION OF OFFICERS:

Guy Gentry called the meeting to order. Roll call was taken and a quorum declared present. He stated the first order of business is to elect a President of the Warrick County Area Plan Commission to serve during 2013.

Brad Overton made a motion to elect Guy Gentry as President. Jeff Willis seconded.

Brad Overton made a motion to close the nominations and Guy Gentry be elected President by acclamation. The motion was seconded by Jeff Willis and unanimously carried.

The President said the next item on the agenda is to elect a Vice-President of the Warrick County Area Plan Commission to serve during 2013.

Brad Overton made a motion to elect Jeff Valiant as Vice-President. Rick Reid seconded the motion.

Mike Moesner made a motion to close the nominations and Jeff Valiant be elected Vice-President by acclamation. The motion was seconded by Brad Overton and unanimously carried.

SET MEETING DATES, TIME, AND PLACE:

Guy Gentry said the meetings are currently held on the second Monday of each month. He said it is recommended they still meet on the second Monday.

Mrs. Rector said except October and November which will be the second Tuesday. She said the County Commissioners have also changed their meeting dates because of holidays. She added

the meeting will be held in the Commissioners Meeting Room, Third Floor, Court House, Boonville, Indiana.

Brad Overton made a motion to accept the meeting dates as stated. The motion was seconded by Jeff Willis and unanimously carried.

ADOPTION OF RULES AND REGULATIONS: *Con't to February 11, 2013*

APPOINTMENT TO THE BOARD OF ZONING APPEALS:

The President stated they need to make their Municipal Representative Appointment.

Mrs. Rector said the Municipal Representative must be Jeff Valiant since he is the representative from the participating towns of Lynnville, Tennyson and Elberfeld.

Brad Overton made a motion to appoint Jeff Valiant as Municipal Representative to the Board of Zoning Appeals. The motion was seconded by Jeff Willis and unanimously carried.

The President said they need to make the County Representative Appointment.

Mrs. Rector stated the two members that qualify for this appointment are Jeff Willis and Mike Moesner.

Mike Moesner made a motion to appoint Jeff Willis as the County Representative to the Board of Zoning Appeals. The motion was seconded by Brad Overton and unanimously carried.

APPOINTMENT TO PLAT REVIEW COMMITTEE:

Mrs. Rector stated Guy Gentry has been on the committee since it began and she would like for him to remain if he is willing.

Brad Overton made a motion to appoint Guy Gentry to the Plat Review Committee. The motion was seconded by Jeff Valiant and unanimously carried.

FEE SCHEDULE:

Mrs. Rector said there are no changes from last year.

ANNUAL REPORT:

Mrs. Rector said they have copies in their packets and she would like for them to review the report and it will be placed on the agenda next month for approval.

MINUTES: Upon a motion made by Mike Moesner and seconded by Brad Overton, the Minutes of the last regular meeting held December 17, 2012, were approved as circulated.

The President stated they are going to deviate from the published agenda in order to hear Boyken Subdivision first. He then explained the Rules of Procedure to the audience. He said any rezoning petition receiving a recommendation this evening will be forwarded to the County Commissioners on February 11, 2013 at 4:00 p.m. in this room.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-13-02 – Boyken Subdivision by Billy E. & Janet Rae Boyken 4.71 acres located on the S side of Powers Dr. approximately 740' S of the intersection formed by Pollack Ave. (S 600) & Powers Dr., Ohio Twp. *Complete legal on file. Advertised in the Boonville Standard January 3, 2013.*

Greg Kissell, Kissell Land Surveying, Billy Boyken and Jennifer Giannini were present.

The President called for a staff report.

Mrs. Rector stated after the primary plat was filed and advertised, Lot 2 was sold to Jennifer Giannini and she needs to be noted as an owner of record as well as the Boykens. She said they have submitted all the return receipts from certified mail of notice to this meeting have been submitted except for Vicki Paxton. She said the Post Office website says the letter was unclaimed and they will need to bring in the unopened envelope when they receive it. Mrs. Rector said the subject property is zoned Agriculture which requires ½ acre lots if supplied with sewer. She said this is a two lot subdivision with each lot being 2.3 acres. Mrs. Rector said the back half of the property lies in a zone AE with the BFE determined. She said any construction in that area will require a certified plot plan showing the building is 2' above the BFE but there is ample building area out of the flood plain. She said the Commissioners ruled today that no improvements would be required to Powers Drive. She said the Drainage Board ruled no drainage plans would be required; however they will need to add a drainage easement down the middle of the two lots when they submit the secondary plat for recording. She said they have submitted a capacity letter from Newburgh Sewer and a capacity letter from Chandler Utilities. Mrs. Rector said this was originally planned to be a parcelization but had to become a major because the sewer lines are not in place for connections. She said years ago they purchased sewer taps for this property but the lines were never built and since the lines were not already constructed it didn't qualify for a parcelization. Mrs. Rector added this property extends into the Ohio River and part of it lies in Kentucky. She added this subdivision only involves the property in Warrick County, Indiana and only references the property in Kentucky and there is to be a note on the secondary plat to that effect and she spoke with Attorney Doll about that. She added the plat is in technical conformity with the Subdivision Control Ordinance and if approved it should be with the condition that there be a note on secondary plat about the property in Kentucky and that Jennifer Giannini sign the secondary plat as an owner as well as the Boykens.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Mike Moesner made a motion to approve PP-13-02 with the conditions as stated by the Executive Director. The motion was seconded by Brad Overton and unanimously carried.

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The President stated they will considered the following rezoning and primary plat together because the plat goes with the rezoning petition; however, they will need to vote on each separately.

REZONING PETITION:

PC-R-13-01 - Petition of K & E Multifamily, LLC by J.R. Kendall, Managing Mbr. OWNER: People's Trust & Savings Bank by Steve Bennett,C.O.O. To rezone parcel 1 being 2.159 acres (Lots 2 & 3 Paradise Park Subdivision) and parcel 2 being 10.80 acres (Lots 4,5,6,7 8 & pt. 9 Paradise Park Subdivision) located on the N side of Oak Grove Rd. (S 300) & E side of SR 261 approximately 0' E of the intersection formed by SR 261 and Parker Dr., Ohio Twp. from "C-1" Neighborhood Commercial to PUD consisting of "C-1" Neighborhood Commercial. *Complete legal on file. Advertised in the Boonville Standard January 3, 2013.*

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-13-01 - Castle Commons PUD by K & E Multifamily, LLC by J.R. Kendall, Managing Mbr. OWNER: People's Trust & Savings Bank by Steve Bennett,C.O.O. Parcel 1 being 2.159 acres (Lots 2 & 3 Paradise Park Subdivision) and parcel 2 being 10.80 acres (Lots 4,5,6,7 8 & pt. 9 Paradise Park Subdivision) located on the N side of Oak Grove Rd. (S 300) & E side of SR 261 approximately 0' E of the intersection formed by SR 261 and Parker Dr., Ohio Twp. *Complete legal on file. Advertised in the Boonville Standard January 3, 2013.*

Mark Hendrickson, Peoples Trust and Savings Bank, Pres., J.R. Kendall, Glen Merritt, Cash Waggner and Associates and Les Shively, Attorney were present.

The President called for a staff report.

Mrs. Rector said they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She the current zoning is "C-1" Neighborhood Commercial and they are requesting a PUD / "C-1" zoning. She said the Zoning Ordinance states regarding PUD zoning *The intent and purpose of these regulations are to provide greater design flexibility and the development of land when consistent with the Comprehensive Plan.* She said this rezoning application was filed to change to a PUD/C-1 zoning which allows private streets, relaxation of setbacks, multiple buildings to be laid out on one lot; however, with the PUD they must either also submit a development plan or primary plat that must show the building envelope of the location of all proposed buildings, parking areas, easements, roadways, and landscaping which is not required in a non/PUD zoning. She stated they have filed a primary plat. She said they have also submitted booklets of the proposed development which include the type of construction, traffic study, etc. She said this property was rezoned in 2002 from "R-O" Residential Office to "C-1" Neighborhood Commercial and was passed by both the Area Plan and the County Commissioners. She said there were no remonstrators at the APC meeting regarding this rezoning request.

Mrs. Rector said the Comprehensive Plan projects this area to be moderate to high density residential and this falls into that category since the definition is more than two dwelling units per acre. She added that Paradise Park Subdivision is a nine lot commercial zoned subdivision. She said Peoples Trust and Savings Bank is located on Lot 1 and the remaining eight lots are vacant. She said the applicants have submitted a conceptual drawing that shows they could build eight apartment buildings on the existing lots and have more units (228) than is being requested in this PUD layout.

Mrs. Rector said the property to the north and east is owned by the School Corporation consisting of approximately 47 acres. She said approximately 32.9 acres are zoned Agriculture and 13.8 acres zoned single family and this is where Castle North Middle School is. She said the property to the south is "R-1A" Single Family Dwelling with residences and the southeast corner is agriculture with a residence. She said west across SR 261 is "C-1" Neighborhood Commercial; "C-4" General Commercial with a business and to northwest of that is "M-1" Light Industrial which used to be Central Tower. She added there is no flood plain on the property. She further stated that the office has received 73 emails of remonstrance that were forwarded to the Board members prior to this meeting. She said they also have a copy of them in their packets. She said they have had a chance to review them today. She further stated they stopped forwarding them at 3:00 p.m.

Mrs. Rector said the primary plat consists of two lots. She said Lot 1 consists of 2.159 acres that has a clubhouse, pool, 6 car garage and one apartment building. She said Lot 2 consists of 10.808 acres with eight apartment buildings and 3 six car garages. She said the plat shows the parking areas and lake that is approved as the retention area for drainage. She said the development is for 208 units consisting of 74 one bedroom and one bath units; 104 two bedroom and two bath units and 30 three bedroom and two bath units. She said per the Zoning Ordinance there must be at least two parking spaces per unit which total 416 spaces and they are proposing 417 spaces. She said this does include the separate garages and some apartments buildings have garages located within the structure. She said they are proposing to plant 42 buffer trees; white pine and blue spruce. She said they are to be six feet or taller and will be planted along the eastern property line and northeast property line. She said there are four sheets in the primary plat; page one is the primary plat; page two is the signature page, etc.; page three is the parking tabulation and page 4 is the tree planting.

Mrs. Rector said the applicants submitted a traffic study as requested by the County Highway Engineer which shows the improvements to SR 261 and Oak Grove Road is being constructed to handle this type of development without any improvements being required to either road or intersection after completion. She said the County Engineer had them to study and supply the numbers for the amount of trips projected on the majority of individuals utilizing Oak Grove Road going north in the morning to access the light which would not require any additional upgrades to that road or the intersection. She said he approved this submittal and it was accepted by the Commissioners. She said the applicants also requested that no improvements be required to Parker Drive and Waldo Way which are interior streets accepted by the County in the existing subdivision plat which was also approved by the Engineer and Commissioners. She said the plan shows that they are going to petition to vacate a portion of Parker Drive if this proposed development is approved and will become a private street which was a condition of the street

plan approval. She said private streets are only allowed within a PUD and they are proposing four private streets and four entrances off of Parker Drive which will still have to be built to the standards as set forth in the Subdivision Control Ordinance. She added that has also been approved by the Commissioners. She added the Drainage Board approved the drainage plan. She said Newburgh Sewer has submitted a capacity letter for the sewer and Chandler Utilities has submitted a letter stating they have sufficient pressure and flow to service this development. Mrs. Rector said the plat is in technical conformity with the Subdivision Control Ordinance for Warrick County and meets all requirements of the PUD Article of the Comprehensive Zoning Ordinance. She said a condition of approval should be the final plat is not recorded until the rezoning is approved by the County Commissioners and until all easements and roadways proposed to be vacated are approved by the County Commissioners and recorded.

Les Shively said he represents the petitioner and with him are J.R. Kendall and Max Kendall as well as Glen Meritt and Scott Buedel with Cash Waggner and Associates. He said that was a lengthy staff report but he wants to come straight out and say this rezoning request is not a change in use. He said multi family is allowed in "C-1" and when this body and the Board of Commissioners approved it in 2002 that effectively was approval for not only commercial uses but multi family. He said that decision has been made and remains of record. He said they are simply here this evening to do this PUD so they can have private roads that will be maintained by the developer and do a layout which they believe is more aesthetically appealing and more functional; not just for this project but also for the surrounding properties. He then asked Glen Meritt to explain the layout.

Glen Meritt said he is the engineer on this project and as they can tell from the display on the left (in packets) they are proposing nine apartment buildings with a total of 208 apartments and a clubhouse. He said they have the drainage plans approved today as well as their road plans and they do meet the parking requirement for the development since they need 416 and they have 417. He said he knows traffic is a big concern and County Engineer Bobby Howard requested a traffic study and they performed that. He said INDOT is currently improving the SR 261 and Oak Grove Road intersection and based on those plans they have projected the 2031 traffic volumes for those roads. He said if you add the traffic generated by this project, they are well under the traffic volumes that INDOT designed for those improvements for SR 261 and Oak Grove Road. He said they also looked at the intersection for Parker Drive and Oak Grove Road and after discussion with the County Engineer they allocated what traffic volumes would be utilized in the morning leaving the development and it was a 75% ratio of utilizing Oak Grove Road and going to the light at SR 261 versus leaving Parker Drive. He said in the evenings coming back they utilize 75% for the Parker Drive entrance coming back. Mr. Meritt said as Mrs. Rector stated they meet the parking requirements and they meet the PUD requirements in the Comprehensive Zoning Ordinance.

Guy Gentry asked about the traffic study. He said they said 75% would be going out to Oak Grove Road. He asked if they made any determination what they would do at the light; turn south, go straight or did it matter.

Glen Meritt said they didn't make any assumptions on the intersection. He said the State's improvement plans for it right now were designed for 2031 projected traffic volumes. He said

Oak Grove Road is 6,080 vehicles per day and if you add 50% of the Castle Commons development going to Oak Grove Road which the split is 75% in the morning and 25% in the evening and the split is reversed for Parker Drive so there is the 50/50 split. He said the Oak Grove Road numbers for 2031 were 6,080 and if you add 50% of the Castle Commons development to the 2011 traffic volumes provided by INDOT on the SR 261 plans, they are at 5,129. He said the 2031 numbers for SR 261 is 27,856 and if you add 50% of the Castle Commons development they are at 20,296. He said based on that alone they did not look at the intersection any further.

Guy Gentry said he doesn't understand traffic studies totally. He said he understands volumes but did they say how long it will take to get through that light.

Glen Meritt said they did not. He said he reviewed the plans and they are extending the left turn lane east.

Guy Gentry said but they are not putting a left turn arrow on the light.

Brad Overton said he knows it is probably hard to determine whether this traffic study factored in the school busses because there will be set times when things will really be congested.

Glen Meritt said based on the traffic volumes there is an a.m. peak hour rate and a p.m. peak hour rate and it falls per the I.T.E. Trip Generation Manual, eighth edition. He said that is what everything is based off and he is pretty sure that peak falls between 7 a.m. and 9 a.m. He said as far as busses; it is a raw number.

Brad Overton said so this wouldn't have been something that was conducted over the summer or sometime when traffic was down.

Glen Meritt said the I.T.E. Manual is based on national numbers and it what everything is based off. He said it is based on 88 studies they have performed where they come up with the number on how you generate a traffic volume for an apartment site. He said it is apartment specific and the numbers of studies were 88 and the average number of dwelling units is 210. He said this complex is at 208 and so it is ideally, exactly set up on this particular site and this study meets basically their site identically. He said again it is a national body that everyone utilizes to perform traffic impact analysis.

Les Shively said it is important to note that the developer has done everything the County Highway Engineer has asked for. He said they did the impact study, they followed the code and they followed the rules. He said he wants to go back to what he said at the very top of his presentation; the land use decision was made in 2002. He showed a display (copy in packet) of what they could do without the change to a PUD. He said this could be done with no Plan Commission meeting, no Commissioners meeting, no traffic study – nothing. He said they can get permits for all these buildings as it is platted today for 228 units, which is twenty more than they plan to do. He said there would be more asphalt and less green space. He said the only reason they are here is so they can have a better plan; a better layout that is more functional for the complex and more functional for the surrounding property. He said if they go out tomorrow

and do this as it exists today it will be the same traffic issues (maybe worse). He said they feel with the improvements the State has done to SR 261 and what they plan to do and the fact they have done all of this analysis they won't create a problem.

Les Shively said he wants to talk a moment about the fact that the Kendall's are not new to this area. He said over ten years ago he had the pleasure of representing Max Kendall, J.R.'s father, when they did the Lake Shore Apartment project over by I-164 in the southeast quadrant across from ITT. He said those are 224 units and if you have been by there you have to admit it is one of the most aesthetically appealing multifamily communities around. He said the average income of the Lake Shore Apartment residents is \$80,000 a year. He said 40%-50% are medical professionals and this makes a lot of sense because of what Gateway and St. Mary's is doing in the area and what this County has committed to with the Wellness Trail. He said his office is right next to it and he sees all of this happening. He said they also have residents that are executives from ALCOA, CSX, Shoe Carnival, Toyota and Mead Johnson. He said last year this complex was voted the best apartment complex, the best multifamily complex in the Reader's Choice Poll conducted by the Evansville Courier Press. He said this is a well maintained facility with two full time maintenance staff and an on-site manager and leasing agent. He said this proposed Castle Commons project is actually going to be a step up from Lake Shore, which he thinks sets the gold standard in this community. He said this project will be on thirteen acres and they are ready to begin construction this spring. He said the rent range for the one bedroom apartments will be in the \$700's per month; the two bedrooms will be \$900's per month and the three bedrooms will be in the \$1200's per month. He said that should give you some indication of what kind of income level of the residents seeking out these units. He said these are higher rents than are being paid at Lake Shore.

Les Shively said as previously noted they have a little different concept with the 24 attached garages and 24 detached garages; the clubhouse, pool and fitness area. He added there will be a central trash compactor – no dumpsters. He said the central trash compactor will clearly be not only aesthetically appealing for the residents but for the people driving by the complex. He said there is generous landscaping and they are already committing to the trees as shown on the drawings. He said they will have twenty-four foot wide driveways and two full time maintenance staff, just like in Lake Shore with the manager and leasing agent.

Les Shively said they asked Steve Folz, Folz Real Estate Consultants LLC, to find out what the property tax impact would be on this project once completed. He said Mr. Folz is a level two certified Indiana Assessor/Appraiser. He said with the cost of the land they are looking at an investment of between \$13-14 million, which according to Mr. Folz will spin off conservatively, annually when completed, over \$200,000 a year in property taxes. He said that is quite significant and he would think local government ... especially with the caps on property taxes and demands on local government anytime you can generate that kind of additional property tax revenue it is significant.

Les Shively said this project is near public schools and they are aware that concerns might be and have been raised about the impact upon Castle Jr. High and also Castle High School. He said his clients began those discussions with the School Corporation officials last year. He said recently there was an article in the Evansville Courier Press dated January 7, 2013, where Mr.

Brad Schneider, Superintendent of the Warrick County School Corporation said, according to the article, *I do not feel in any way shape or form that what we do will be compromised if these units are built as proposed.* He added that, according to the article, Mr. Schneider said basically he could see no impact on the ability of the school to handle the additional children. He said in Lake Shore there are only twenty-eight minors in that entire complex of 224 units. He said they expect a similar situation here since a lot of these residents will be empty nesters on one end of the spectrum and on the other end young professionals, many of them medical professionals. He said the area is rapidly developing to be a major regional medical center. He said these technicians, physicians, nurses and med techs want to live close to work. He said the beautiful thing about this complex is when they go to work on their various shifts they can pull out and get on the improved SR 261 to the Lloyd Expressway and be on four way roads to get to either Gateway or St. Mary's complex. He submitted a copy of the article from the Courier Press to the Board. (Copy on file)

Les Shively said there is a lot they can talk about this evening but he will leave it open for questions but in summary he would say this property was platted in 2001 and rezoned in 2002 extensively to generate some interest. He said now here they are in 2013 and nothing has been sold or developed there. He said here is an opportunity to do a quality development; quality housing and generate property tax revenue by a proven entity that has shown they can do that and is continuing to do that just west of the Warrick/Vanderburgh County line. He said he can't say this too many times because it is crucial to the discussion of this evening; the land use decision was made in 2002, eleven years ago. He said they are only here this evening is so they can avoid this (possible development) which they can do tomorrow but do a quality development with more green space, less asphalt and a better functional configuration all around. He said this is good zoning and it is good for Warrick County. He said he knows there are a lot of people here this evening that will offer different opinions. He said what he said to them this evening is not just his opinion; it is facts backed up by the staff report, the review of the street plans by the County Commissioners and Drainage Board and it is based upon objective data that has been generated to support this project. He said there are thousands of people who live in Warrick County that aren't here this evening and they depend upon this Board to make the right decisions for long term land usage and to encourage development so Warrick County can prosper economically and this is that type of project that accomplishes those goals and they ask for a favorable recommendation.

Ascertaining there were no questions from the Board the President said he knows there is a lot of remonstrators present and they did receive 73 emails that were forwarded to each Board member and they have had time to review them and highlight and tab them. He added staff has also done a summary sheet because a lot of them were very repetitive which is understandable because you have many of the similar concerns. He said he doesn't want to cut anyone off this evening; however, he asks for courtesy so they aren't here all night. He asked them to try not to repeat each other and they have seen all of the emails and it is a matter of record. He said they will let them verbalize their concerns as well but please don't repeat what someone else has said. He said if they have additional things for them to consider or questions they would like answered then they would like to know what those are. He then called for remonstrators.

Rick Martin, Martin & Martin Attorneys at Law, stated he spoke with several remonstrators yesterday evening and their intention is for him to speak on behalf of many of them so they don't

all have to come up and spend a lot of time with repetitive comments. He said the first thing they would like to recognize that the land is zoned "C-1" presently and that does, under the current zoning ordinance, allow for the proposal they have shown there with regards to the upper photo (display of building on each lot). He said just because they can do something doesn't mean it should be done. He said he thinks the Zoning Ordinance does allow that but he thinks they have a number of parents and residents here from the area that have some significant concerns as to that particular parcel being used for apartments. He said particularly due to the close proximity to Castle Middle School North and a lot of the bus traffic that goes through there. He said most of the people he has talked with were not anti-apartment; not anti-development but are concerned about the impact on the school, school system and on the neighborhoods in their area. He said that is their primary concern and he would point out that under the Zoning Ordinance for a PUD to be deemed appropriate they have to show three things; that it promotes a harmonious variety of uses; provides for an economy of shared services and facilities and the PUD is compatible with surrounding area, fostering the creation of an attractive, healthy, efficient and stable environment for living, shopping or working. He said he thinks it is primarily a lot of the things in the third category that they feel would be impacted negatively if apartments are built on that site. He said you are looking at 208 units on one proposal and slightly more on the other proposal. Mr. Martin said they know they are asking for this to be changed to a PUD so he is assuming if this proposal is granted they will build that but he doesn't know if they will build the other plan if it gets denied. He said he hasn't heard from them that they will, he has heard that they can. He said again, just because you can do something doesn't mean you should. He said this is right in the front yard of Castle North Middle School and putting 200+ units in there – looking at one to three bedroom units- there could be anywhere between 400-500 people. He said anytime you take that kind of population density he thinks it creates some safety issues with regard to the schooling with it being right there at that location. He said he thinks just earlier today in an apartment complex in Newburgh there was a dangerous one pot meth lab found and four people were arrested. He said he understands those kind of things do happen in apartment complexes and they happen in residences as well but do they want to take the risk of it happening yards away from the middle school. He asked if they want to take that risk. He said he thinks it proposes a safety issue for the children and that school. Mr. Martin said there could be guns and other things on that property and in that close proximity to that school it poses significant risk for the children and those schools.

Mr. Martin said another issue that was raised, rightfully so, is putting 500 people in that area...he doesn't know what their common areas are but people will consider the school grounds as part of or an extension of their property and it will create a lot of burdens on the school system with people walking their dogs on the school property and not picking up the droppings and other such activities. He said some of that may occur during school hours and he would imagine a significant amount after school hours that may pose some safety issues for children. He said those are some of the concerns. He added traffic has been a big concern that has been raised as well. He said granted the road is being widened and as he understands it will be five lanes up to Fuquay Road-two lanes each way with a center turn lane and then three lanes down to Old Plank Road. He said with volume of traffic and busses from four schools moving through those areas in the mornings and afternoons and adding another 500 cars coming in and out of there to go to work he thinks is going to create a really difficult traffic situation. He said it will be difficult for people to get through and create problems for the busses and the school.

Mr. Martin said “C-1” zoning allows for residential development which is sort of a default and in reviewing the Zoning Ordinance he noticed it was not placed in there when there was a comprehensive review when the Zoning Ordinance was re-written but it was amended in 2008 to put it back in there to allow it. He said he thinks the primary use for “C-1” are things like offices, restaurants or things of that nature, not high density residential. He said putting a high density residential situation here is not compatible with an area where you have a lot of schools and you have that extra demand on traffic. He said if this area were office buildings or restaurants you wouldn’t have the same traffic concerns you do by putting a 200+ apartment complex in there. He said he can’t quote Brad Schneider directly from that article in the paper but if they look he did indicate they could educate the children if that many families move in there and it won’t create an extra burden on the school system and he thinks that is the case and it would be the case if it was built in that location or another location within the Castle school district. He said the school system would adapt- that is part of growth. He said he thinks the problem here is not developing an apartment complex; it is putting it in this particular location. He said he thinks Mr. Schneider did comment in that article something along the lines of he would prefer not to see it in that location. Mr. Martin said he would agree with him and he thinks many of the people in the room this evening would agree with him on that.

Mr. Martin said they have heard some discussions here this evening; he said Mr. Shively has indicated there is sort of a list the salaries that live in the sister apartment complex and some of the plans for this complex and who would live there. He said the fact of the matter is, they don’t know who is going to live there at this point in time. He said the other fact of the matter is can they guarantee them that is how it is going to be built and that is who their market is going to be. He said the school has been there a long time and it will be there for a long time. He asked if they can guarantee that twenty years from now these apartments won’t be run down and dilapidated and an eyesore and have an increased level of danger to the students. He said he doesn’t think that is something they can guarantee. He said there was a very similar situation that occurred about 5-6 years ago in Vanderburgh County near USI. He said there was a developer who wanted to put in some apartments out there near USI and the local neighborhood associations opposed it. He said the developer promised them in meetings that it wasn’t going to be student housing and he wasn’t going to build it for that purpose. He said within months of that development being finished he was advertising for students to live in that complex and that is exactly what happened. Mr. Martin said that tells you that they can’t control who their tenants are going to be and ultimately they probably don’t intend to; the price will control it. He said he wants to reiterate again they are not opposed to apartments; they are not opposed to them being put in the school district. He said obviously the school can adapt and handle that. He said their concern is based on safety, traffic and it not being consistent with the other development in the area with the particular complex in this particular location. He said they respectfully ask they consider not approving the PUD here. He said he doesn’t know if they will build the other or not he doesn’t know but he thinks certainly if they approve the PUD they will move forward and they will see apartments built there and they will see the ground breaking this spring. He asked again for them to consider their concerns and comments and weigh it carefully in deciding how to rule on this.

The President asked Mr. Martin if he represented a particular group.

Mr. Martin said there is no particular group but he has met with a number of people.

At that time over half of the room stood and clapped.

Mr. Martin said he guessed they could say he represents the people who stood and clapped.

The President called for further remonstrators.

Dawn Bratton said she is not an attorney, she is a parent and part of what she is going to say is just from living in that neighborhood and experiencing some of the issues. She said the first thing is, she was quoted in the Courier and what they wrote is not what she said and she would like them to take that into consideration. She said she does have a response from Mr. Schneider to a parent and you can quote him. *Let me say, I am on record as saying if I had my choice I would prefer the complex to be built on another site in Warrick County. We do recognize the additional safety and traffic concerns the proposed complex presents.* She said they had several numbers about the traffic and her question would be ... what is the year they were using?

Glen Meritt said the SR 261 plans project a traffic volume and they designed the improvements for 2030.

Dawn Bratton said she would be interested in how...her understanding is they would like to begin development in 2013. She said that is going to go right along in conjunction with the Oak Grove Road widening. She said she would be more interested in hearing about the next five years; what type of traffic concerns are going to arise. She said she thinks that is a very specific concern. She said she talked to Mrs. Scales, the Principal at Castle Elementary, and right now it is very difficult to turn into Castle Elementary. She with the addition 400 cars they are allowing for that will be 400 more vehicles either going to work or dropping students off. She said she definitely thinks that is a major concern. She said as far as projecting how many...there is an apartment developer in Evansville that the apartment rent ranges from \$700-\$1100, very high end apartments and the manager there said that due to the fair housing association they cannot discriminate against renters. She said she is sorry but to have that type of renters so close to Castle North Middle School is a huge concern for the parents. She said if there is a need for an apartment complex-have they looked at-there is lots of land available in Warrick County-there is lots of land available in Newburgh, why does it have to be this particular parcel adjacent to Castle North. She said those are just a few of the extra points she wanted to make.

Amanda Stratman said she owns property nearby and have students at both Castle North Middle School and Castle Elementary. She said she is a little confused over the statement they can accept the students into the school without it being a burden, especially at John H. because of all of the elementary schools in Newburgh that is the one elementary school that has been closed to inter-departmental transfers (if baby sitter lives in that district, etc.). She said that has been closed for several years and so that surprises her that they said they can take care of the children that live there without any additional burden to the children that are already there. She said she also doesn't feel the traffic question that was asked about the bussing situation was ever answered. She said if there is going to be additional traffic studies done she would really like to see the focus on a school day on maybe more than one school day during busy drop off times as

well as after school events. She said they live 4-5 houses past the school on Oak Grove Road and if she is coming home from work (as an on call hospice nurse) and often times she comes home around 9 p.m. when a school dance is getting out and it is not surprising if she comes off SR 261 to wait 45 minutes to get four driveways past the Jr. High school to get to her house. She said now they have closed Casey Road she has no alternative unless she goes all the way around to Vann Road and that is quite an inconvenience to do just to get home. She said she had done it before but she doesn't want to have to wait beyond another several hundred cars also either trying to get their kids or whatever. She said her property backs up to the school near the track. She said they have received several emails there has been some vandalization done to lights, speaker boxes, track, nature center and various things throughout the past year. She said she thinks that is a big enough concern for them in their community with the population and what they have around it already, she can't imagine adding 500-700 residents in the area and like someone else said, it not matriculating into the area of the school. She said it is the taxpayers that is going to pick up the money that has to replace the track sooner and take care of the nature center and possibly the playground equipment at John H. She asked they consider those things as well.

David Barron said he has lived in Newburgh for approximately twelve years and is in his third house. He said a few years ago, after an economic down turned, he and his family decided to sell their house and move into the best apartments they had in Newburgh. He said he wants to tell them a few things that do come from apartments that you don't hear from their side. He said first of all they say they will make this beautiful thing with all the trees and bushes but in the development he was in they died and stayed there and looked horrible. He said the central trash compactors are really good but in the place he lived it never got dumped but every two to three weeks; they compress the trash and it stays and it runs out of the back of the dumpster and it looks and smells horrible. He said luckily they lived on the far inside and he didn't have to worry about it.

Mr. Barron said people always walk their dogs and they will either walk around the track or walk around the school. He said the kids in the apartments will ride their bikes and skateboard. He said the public library has signs posted they don't want the kids on their property and they will now go to the middle school because it is right next to them and there is easy access and they will go play.

Mr. Barron said there is a lake and everyone will go fishing in it and leave their trash. He said he had to pick it up all the time because the maintenance people didn't. He said theirs won't either. He then said the lady that lived below them ran a daycare out of her apartment and he knows it wasn't legal but she did it. He said there were always people having parties and plenty of drinking and he asked how that was going to work when they have an eighth grade dance. He there are guys who live in those apartments who will whistle and call to the young girls walking around and try to come into their apartment. He said no one wants that and his little girl will be going to Castle Middle School and he doesn't want his little girl to be hit on by some thirty five year old man. He then said the clubhouse and pool is great but the clubhouse they had at his complex didn't allow kids in it. He said so the clubhouse was nothing for the kids. He said the playground was very small and was for four years old and younger. He said the pool had plenty of people who use it and there is a lot of beer and parting going on and people invite all of their

friends over. He said some people were in there with no clothes in the middle of the pool and the middle of the apartment complex.

Mr. Barron then said there is only one name on the lease and then you can have roommates who aren't on the lease and he can have as many roommates as he wants and they won't know who is there. He said there is a business in Newburgh who rents out three apartments in that complex and six or seven people live in each one of them that help run the business. He said he has seen it and he knows it. He said the developer won't know who all is living there and he is in it for the money and that is the only they are renting it for. He said they don't care about how good or pretty it looks and they don't care about how good it looks in ten years. He then said people complain about stalkers and the maintenance person at his complex would ask if he had seen anyone walking around because there were complaints about people peeping in windows. He then said when they moved in their complex they looked at another one and the maintenance man there was a registered sex offender but the complex wouldn't let him go because he was a great maintenance guy. He said the maintenance guy has the keys to every apartment there. He asked if they will check them out. He said this has nothing to do about how much people make or how pretty they are going to make the complex it is all about money. He said they are here tonight about the safety of their kids, plain and simple.

Robert Lechner said he just has some questions about the traffic study. He said when the State was doing the study did they look at the road specifically or did they do a theoretical road. He asked if they take into consideration that it is next to two schools and count the number of busses and so when they say they can accommodate 6,000 traffic on Oak Grove Road, how many of that was busses or was it incorporated into the study. He said his other question is the numbers they had it sounds like it will be pretty close to maximizing the capacity of that road; would that then preclude any other developer on Oak Grove further east. He said he just wasn't clear about the numbers.

Glen Merrit said as far as the INDOT traffic study, it was referenced in the SR 261 improvement plans, and he had nothing to do with that and he has no idea where they got their numbers. He said DLZ Engineers out of Indianapolis prepared those plans and he is assuming prepared the traffic study. He said he doesn't know any more about it that what he has already told them. He said as far as maxing out Oak Grove Road; the State designed it based on 2031 projected traffic numbers and Oak Grove Road was designed to handle 6080 vehicles and half of their development and the 2011 numbers are 5129 vehicles and so they are roughly 900 below maxing it out.

Susan Hirsch said her family is strongly opposed to the plan to build the apartment complex. She said she has children who attend both Castle North and Castle Elementary. She said with the recent and past school tragedies and school safety a national priority; she would like Warrick County to make the decision to put the safety of our children and the security of our schools above profit. She said please make the decision to stop new apartment complexes from being built next to Castle North and all other Warrick County Schools. She said she would be curious to know how the row of trees on the east side of the property will keep out the residents, including potential sexual offenders or people using the property and possible vandalism. She

said she believes the property line is six feet away from the exit driveway and how is that line of trees going to keep people out of the school property.

The President stated she should ask her questions to the Board and then the petitioner will be given the opportunity to answer her questions.

Ms. Hirsch said unless you understand the traffic problem as a parent or as someone going to and from work in this area you can't possibly understand the situation. She said she has visited the Lake Shore Apartments which are advertised as being luxury with a beautiful lake. She said she believes the lake is the whole in the ground that was left after raising the area of the apartments. She said it advertised as being secluded; however, it is next to an interstate. She said she drove through the complex and the area seems like they put as many apartments in that space as they possibly could. She said they are packed into the land area and the drives through the complex are very narrow. She said she drove through in the evening when most people were home and there is not much space in front of the apartments and the parking spaces and the narrow lanes it is very compact. She said she wonders if that will be the same situation will occur at this new complex.

Ms. Hirsch said part of her family in Evansville had to sell their farm (home and barn) that had been in their family for over 100 years because an apartment complex was built right next door to their home and land. She said with it brought vandalism and increased traffic. She said she would like to see skilled workers benefit from low traffic projects at this commercial area rather than an industrial developer with their own construction business. She said she is sure some of the Board members have children at Warrick County Schools, possibly including Elberfeld Elementary and asked if they would welcome a new apartment complex next to your own child's school. She said the parents and families of the area are home owners and they are property tax payers and they are stable voters. She said they are creating an unsafe situation for their children and asked them to choose school safety over profit and vote to reject this rezoning.

Christy Hudson said she just has a real quick question. She said she attended the school board meeting and after the meeting adjourned, one of the Board members (who she believes used to be on this Board) said her parents live very close to Canterbury Apartments off Lincoln Avenue and when those went in the crime rate around that area dramatically increased. She said she would like to know what the plans are for this. She said that area is their school and she has a seventh grader and two more younger children that will also go to Castle North. She said those are big concerns of hers because right now it might be a beautiful area but when her three year old gets there what is it going to look like. She asked how they are going to make sure that her child will be safe then. She said she went to Castle Elementary, Jr. High and High School and she loves this area. She said she and her husband grew up in this area and they chose to raise their children here and she would like for them to put the safety of their kids first.

Mark (no last name) said he had two daughters that will be going to Castle North next year and he asked if once these apartments are finished how many of the Board members or developers want their kids to go to that school and then asked why he should have to send his kids there.

Linda Johnson said she lives in this area and her child is in eighth grade at that school. She said he is there 6.5 hours every day for over 200 days a year and she doesn't want to put him in a situation where he spends that much time near where there could be inappropriate people living. She said regarding Parker Drive she would like to equate that to Vann Road before the light. She said there were so many accidents at the Vann Road/SR 261 intersection by the high school. She said so many people were injured year after year because it was a stop sign and people were trying to turn left to go south on SR 261. She said they finally put a light there. She said Parker Drive is probably going to be the same situation where people are going to be leaving the complex and try to turn left to either get to Oak Grove or go south on SR 261 and they won't have a light either. She said they can't put a light that close to the light that is on Oak Grove Road and she thinks the study needs to be further done on the road situation. She said she knows they said at the beginning that certified letters were sent to the adjacent property owners but she didn't hear about this until two or three weeks ago. She said these people have been planning this for a year or more and the parents that are here isn't everyone; it is not representative of...she doesn't think a lot of people even know about this yet. She said her kid goes to that school and she would have liked to have notice about it. She said she knows they sent a letter to the school board and she doesn't know why they didn't notify the parents because she would have liked to have known about this months in advance so they could have more people here. She said she believes this is a smidgeon of the people that would be against this project.

Ascertaining there were no other remonstrators the President asked Attorney Shively to respond to the comments.

Les Shively said before he does that he wants to make it clear and unequivocal, the answer to Mr. Martin's question is yes, if they don't approve this PUD they will use the present configuration and start pulling permits tomorrow. He said they would prefer not to do that; they would rather have the PUD approved and do a more aesthetically appealing development that is more functional and works better for all the adjacent properties, but they will move forward. He said the reason they will is because there is a demand for multi-family housing, quality multi-family housing. He said he doesn't know where to begin with the comments from the remonstrators so he will start by saying this about traffic; they have received the booklet on the project. He said the Kendall's submitted traffic information that shows that essentially, this proposed project would generate about 100 less trips per day than if this project were developed as commercial offices. He added his office is right next to the Lake Shore Apartments and he is there seven days a week. He said the facts about that complex are one, the lady who said the lake is a hole in the ground dug for the complex – unfortunately that is untrue. He said that so called hole in the ground is a borrow pit that was created and stocked by the Department of Natural Resources when the I-164 was built. He said it is stocked and it is a beautiful lake and the Kendall family designed that apartment complex around that existing lake. He said he invites any of them to go take a look at it. He said the complex is beautiful and there is more than ample parking. He said the reason he knows this so well is because he is there seven days a week. He said this notion about how there is going to be a traffic jam in the morning – remember when he told them that many of the residents are medical professionals. He said he is a runner and he runs at different times of the day and whenever he runs he sees almost the same number of cars in the parking lot at those times and the reason is the residents are not 8-5 people. He said they are mostly in the medical field and they feel this complex will be the same. He said they work

different shifts and they all don't cue up at 7:30 in the morning to head off to work; they leave at different times because they are on different shifts, that is the reality.

Les Shively said another thing he takes umbrage with and he has heard since the '80's when he first started zoning work; apartment dwellings are bad people.

An unidentified woman commented from the audience.

The President stated he wants the presentation to be respectful from both sides. He then asked Mr. Shively to continue.

Mr. Shively said the single largest investment he has personally is in his office building and lot and he has been there since 2002. He said the apartments have been there a little over ten years. He said he has never had any damage to his building or his vehicles. He said Cash Waggner is a tenant of his and they have never had any damage to their part of the building or their vehicles. He said there has been absolutely no vandalism. He invited any of them to go around that apartment complex or lake tomorrow morning. He said people fish that lake and he dares them to find any trash. He said maybe it is because the two maintenance people are full time and police the area because he sees them around the area. He said it is a beautiful community and it is really unfortunate that here they are in 2013 that people will naturally assume that someone who chooses, due to lifestyle or being a young professional or empty nester, to not own a home and have the responsibility of the maintenance is somehow a bad person, a vandal or a drunkard. He said that is just not logical and it is wrong. He said as far as any criminal element he will tell them right now the one thing the Kendall Group does is they have an extensive application and criminal background on every tenant they consider. He said he doesn't know what others do.

Mr. Shively said Mr. Martin made a comment that he has to agree with; he said the price will control the residents in that area. He said all he can say is BINGO and DITTO; when you are at these price points for tenants it drives the type of people you get. He said you get the type of tenants like Lake Shore with an average income of \$80,000 per year.

Mr. Shively said he wanted to go back to the traffic issue for a moment. He said Cash Waggner Engineers didn't dream up these numbers, they used INDOT's numbers and they did everything Mr. Howard, the County Engineer asked of them, multiple times. He said it was vetted over and over again and if someone has some objective engineering data that shows their plan is not going to work they want to see it and they will gladly consider it and incorporate it in a modification to what they have been submitted and approved by the County Commissioners. He said obviously they don't want to have a place that people call their home that is difficult to access by ingress and egress, but you don't arrive at that by speculation of what may happen without the support of objective engineering data. He said that is what Cash Waggner has relied upon and that is what the County Engineer relied upon in recommending to the County Commissioners that this was a suitable plan. He said they were asked when INDOT did the study and the one thing that is clear, the schools were there when it was done. He said the schools and the traffic they generate were taken into consideration when INDOT did the traffic model. He stated they are not changing the land use; this can be done tomorrow and the only reason they are here this evening is so they can do a PUD that creates a better plan. He said Mr. Martin mentioned the criteria for a PUD; they

meet all that criteria. He said it promotes harmony of use, it is compatible – in fact with the PUD they are locking in where the buildings will be and the size of the buildings and it gives the county more control; a lot more than what they can do now which would have more units. He said he knows the people here tonight are good people and he doesn't want to sound like he is being critical but the fact of the matter is they have complied with the requirements of an ordinance and they have done the appropriate traffic studies and they have met all of the criteria. He said they have laid out the information and they have before them a developer with a proven track record. He said if you figure that 224 units in Vanderburgh County has been there ten years and has generated over \$200,000 a year in property taxes that is pretty easy math. He said these people have proven they can do it and do it in a quality way. He said Lake Shore has been there for over ten years and it looks like it was built yesterday. He said this is a quality project and it meets the Comprehensive Plan and the Executive Director stated that clearly that it is consistent with the Comprehensive Plan. He said it is good zoning and this project will be a compliment to the area and will be good for Warrick County and they ask for a favorable recommendation.

Guy Gentry asked if the onsite manager will be full time. He asked if he knows the hours they will work.

J.R. Kendall said the manager usually works 9-6 and the maintenance people work 8-5. He said in a lot of the units the maintenance people live on site as well as the managers sometimes. He said they are members of the community too and he would say the residents at Lake Shore are very happy with them and rely on them as fellow members of their community.

Guy Gentry said they do criminal background checks and these will be privately owned and asked if there will be any Section 42 or Section 8 under these apartments.

Mr. Kendall said these will not be subsidized housing. He said the Fair Housing Law won't allow discrimination but with a voucher the rents wouldn't work.

Les Shively said in Lake Shore one of the tenants is a Warrick County Sheriff's Deputy and he has been there a long time and they give him special consideration on his rent situation because he has a take home car and it is a nice thing to have sitting in the parking lot. He said he also sees a Chandler Police Officer there all the time. He said they are very police friendly and they know the residents appreciate knowing they have law enforcement people in the community.

Guy Gentry said he knows they have Lake Shore here locally and they have communities in Zionsville and other places. He asked when those were built and if they still own them. He said he guesses his overall question is have they built other complexes that they no longer own.

Mr. Kendall said they have sold two complexes in the last ten years.

Guy Gentry asked if they have given consideration as to some other barrier besides the row of trees between the school corporation and the complex.

Les Shively said if he has an idea they would consider it.

Guy Gentry said he would like a fence of some sort.

Les Shively said they would consider it. He said they need to remember, despite the comments they have heard, this community is not going to be a penitentiary; they are not going to lock these residents in and so they don't want to have something that make them feel like they are cloistered in but certainly they will consider some type of barrier fence that will be aesthetically appealing on both sides. He said they thought the trees quite frankly would be better because it is natural and when fully developed will provide screening that looks better than an unnatural screen.

Guy Gentry asked if there are any pet regulations.

J. R. Kendall said they have a 40 pound dog rule for Lake Shore. He said in their complexes they also put in the doggie bag dispensers around the project and those have helped as far as keeping things clean.

Les Shively said he has seen the resident using them

Mark (no last name) said he was talking about appealing; there is a 10' fence between an apartment complex and a subdivision in Newburgh. He asked why not, he would rather see the fence than the little puny trees that will take ten years to grow and won't stop anybody. He said Target was made to put up a fence all around their complex so none of the neighbors had to look at the back of Target. He said he doesn't want to see the apartments and so put a fence up.

Jeff Valiant asked if they have any kind of occupancy study as far as what kind of tenants they are looking at; elderly, middle aged, minors etc. He said they made a comment earlier that there were 28 minors in Lake Shore.

J. R. Kendall said they haven't done any formal market study. He said the rents will determine the residents.

Dawn Bratton said she volunteers at Castle Elementary in the office and every day they get called and asked 'we want to rent so our child can go to Castle Elementary' so she doesn't think they can compare the complex he is talking about in Evansville with this one as far as the residents that are going to move in.

The President said he feels that both sides have presented their side and he would entertain a motion.

Mrs. Rector said they will need to vote on each application separately.

Rick Reid asked if counsel can make an opinion of what they have here.

Attorney Doll said the proposed use for multifamily could be built there today; that is a permitted use in that zoning category and has been for the past eleven years. He said counsel for the

applicants is correct, they could pull permits and start building apartments virtually immediately. He said what they are asking to do is to use a PUD (Planned Unit Development) which actually gives the County more control over the nature of the buildings, the streets, the environment that the project will have to follow. He said the purpose of the PUD frankly is to improve the use of land, not merely control it. He said it is to do away with the concept of where you have rows and rows of large buildings in straight lines that have become so unattractive that many major cities are now tearing them down and redeveloping them as PUD's. He said the grounds for this Board to turn down this application are they would have to find that they violate a requirement of the County Ordinance. He said staff has already made a report to the Board that the application is in technical conformity with the ordinance; so from a legal point of view there is no justification for turning down the application.

Ascertaining there were no other questions the President called for a motion.

Rick Reid made a motion to recommend approval of PC-R-13-01 to the County Commissioners. The motion was seconded by Mike Moesner. Brad Overton voted against the motion and all other members voted for the motion.

Guy Gentry said this will go to the County Commissioners on Monday, February 11, 2013, at 4:00 p.m., Commissioners Meeting Room, with a recommendation of approval.

Guy Gentry then called for a motion for the primary plat.

Rick Reid made a motion to approve PP-13-01. The motion was seconded by Mike Moesner.

Guy Gentry said he has some concerns as far as maybe some additional landscaping issues and he isn't 100% of what they should be. He asked if the Commissioners can set restrictions as well or is that only done here with the landscaping.

Mrs. Rector asked if he means with the platting.

Attorney Doll said the platting is done here and the PUD is here. He said it seems to him if he has some suggestions now is the time.

Guy Gentry said he not sure exactly what the suggestions are. He said what he is saying is he would like to review it a little more to come with some ideas for it. He said he has concerns over the whole traffic study issue. He said he knows the traffic study was done and they are bound by ordinance that it was approved by the Commissioners and therefore they have to go with it but he agrees with the public. He said he would urge the developers to do their own study and be at that corner in the mornings and to petition the State to get a left turn arrow off Oak Grove Road on to SR 261 which is not currently in the plans. He said there is a turn lane but not a turn light as designed now, however, he thinks that would be a pretty simple fix but it would have to be requested and he would urge that as good neighbors they would get involved and help get that established. He said it is his understanding the control box would handle it but it something that has to be asked for and Todd Richardson is the project engineer who may perhaps be the contact person to get that accomplished.

Mr. Shively stated they would request that.

Mr. Gentry said the other concern is aesthetically he believes trees are prettier however a concern of both directions – students going into the complex as well as people going out – he does agree, what they are looking at on the high end will limit the type of people perhaps to a certain degree of what type of tenants they have in the complex, however, there is still some concern of just the openness of it. He said he doesn't know if there is some way they can aesthetically be secured without making it look as a prison to the inside but yet blockage to deter passing through from both directions. He said he just wants to state that but he doesn't have any specifics but he is asking for additional consideration and cooperation as things come up. He then stated there is a motion and second on the floor. Brad Overton voted against the motion and all other members voted for the motion, therefore the motion carried.

The Board took a five minute recess at 7:35 p.m.

REZONING PETITIONS:

PC-R-13-02 – Petition of GWC Construction by Gary Crickmer, Pres. OWNER: Elizabeth Ison to rezone 1.54 acres located on the E side of Russell Road 0' SE of the intersection formed by Russell Rd (W 675) & Pruden Dr., Ohio Twp. from "A" Agriculture to "C-4" General Commercial with a Use and Development Commitment. *Complete legal on file. Advertised in the Boonville Standard January 3, 2013.*

Gary Crickmer was present.

The President called for a staff report.

Mrs. Rector stated they have submitted all of their return receipts from certified mail to adjacent property owners. She asked if before she goes ahead with the staff report does he want to go ahead with his application.

Mr. Crickmer said hold on with that. He said he just found out that his business is getting ready to increase quite a bit and it will be too much for this property anyway. He said he is moving his business to Meyer Center in Boonville.

Mrs. Rector said on Friday, January 11, 2013, Todd Eissler telephoned the office and spoke to staff indicating he was going to prepare a lease agreement with Mr. Crickmer in order for him to move his business to 814 W Main. St, Boonville, Indiana. She added he said the space he will rent to Mr. Crickmer will not become available until April 15, 2013 and he emailed a copy of the lease and cover letter to the office and it should be in their packet. She asked if he wants to move there and no longer have the business at his home. She said he can't move until April 15th and he is in violation of the Zoning Ordinance at this time. She reminded the Board that he was before them last month with a violation and the Board gave him sixty days to clean it up or file a rezoning.

Mr. Crickmer said a section of the property won't be available until the 15th but most of it he will be able to be working on getting everything there, such as the dumpsters and all the stuff outside. He said there is just one section inside that will be his office that is being used right now until April 15th.

Mrs. Rector asked if he is asking to withdraw the rezoning application and asking the Board to give him a certain amount of time to get his property cleaned up and the violation removed.

Mr. Crickmer said he is okay with that. He said if his business is going to get bigger he is going to have to move and he is going to have to hire twice as many people, so yes, he wants to move it there. He said it is a better place and has a parking area and more convenient.

Attorney Doll asked how long it will take him to clean up the exterior of the property.

Mr. Crickmer said that kind of threw him off because he thought after they saw his before and after's he was in compliance to a point.

Mrs. Rector said he has a business running there and that isn't in compliance.

Attorney Doll said he is asking about cleaning it up; how long will it take for him to clean up the exterior of the property.

Mr. Crickmer said within a week to a week and a half. He said he that depends on the amount of work he gets.

Attorney Doll asked if he would have it done within a month.

Mr. Crickmer said yes.

Attorney Doll said when he said he was just waiting on the office part until April 15th, where will his employees park their cars and gather for work. He asked if they will be able to start at this Boonville location earlier than April 15th.

Mr. Crickmer said they can park there.

Attorney Doll said so they can quit bringing the employees to his property and he can clean up the exterior of the property within a month and he will quit the administrative portion of his business by April 15th.

Mr. Crickmer said yes.

Guy Gentry said he has asked to withdraw the petition and he has given them his plan as to what he intends to do. He asked the Boards wishes.

Mike Moesner said he has a letter that says he is going to be doing that so it isn't like he is making it up and he thinks they can give him some time especially since he says he can clean up

the existing situation in thirty days. He said he understands he is moving someplace else and he is willing to give him the time.

Guy Gentry asked if the Inspector could go to the property before the next meeting.

Attorney Doll said that is actually less than thirty days because this is the 14th and the February meeting is the 11th. He asked Mr. Crickmer if he could have it done by then.

Mr. Crickmer said they were getting ready to start on it this morning but he got a work order and he had to go.

Attorney Doll said he understands but they want him to get into compliance.

Mike Moesner said he would make a motion to give him until the next meeting to come into compliance with the existing situation and that he is in the process of moving.

Attorney Doll asked if that is for the exterior of the property and the employees no longer parking there.

Mike Moesner said yes. Rick Reid seconded the motion.

Gary Crickmer said they have already done some of that. He said his question is on the parking, he has a son who works for him and he is getting ready to move into the house with them. He said he drives a company truck.

Attorney Doll said people can drive a company truck home but that isn't what the people are complaining about.

Bill Fultz, 5655 Pruden Drive, said he owns the adjacent property to him and he wants to let the Board know that just because he says he is going to do this doesn't mean he is going to do it. He said they have already had two letters from the Plan Commission for him to clean this up and not one time has he done it. He said finally when they sent the cease and desist order for the business he was running – he guesses what he is trying to say is they haven't got their money's worth yet because what is the guarantee that he is going to do this. He said they have suffered a lot from this guy and he has brought up his car next to their house and turned the radio up as loud as it would go. He said the police have been out there fifteen times; unfortunately there is no ordinance against playing your radio. Mr. Fultz said they would play the radio and they would ask for it to be turned off and he wouldn't so they would call the Sheriff and they would come out and he would turn it down and as soon as the Sheriff would leave it would go back up. He said he wants a guarantee that all of these trucks and trailers and junk be out of there. He said this has been stretched out since June and what is to keep him from stretching it out another six months.

Guy Gentry said he is assuming that if they continued on with the rezoning petition he would be against that as well.

Several people in the audience indicated they would.

Guy Gentry said to somewhat answer he thinks they are in better position that he is not in compliance to run a business where he is and his only option was to move, which he says he is doing, or to rezone, which may or may not be approved by this Board and the Commissioners. He said the bottom line they are looking at is to have him out the area and that is what he has indicated he is looking to do. He said he thinks they are in a better direction than what they were by rezoning. He said if he is still found to be in violation (next month) they can take legal action through the attorney to see he is in compliance of not running a business out of a residential area.

Bill Fultz asked what happens if he does do that and then in two or three months from now he is doing the same thing again.

Guy Gentry said they are looking at next month and they will send an Inspector out to look at the property to find out if he is in compliance as he says he will try to be and if not then at that point they can take action.

Bill Fultz said he guesses he is looking for a guarantee that they can't give him.

Guy Gentry said he guarantees they will enforce the Ordinance of seeing he is in compliance.

Bill Fultz said all of the families have been through quite a bit over this and they want to make sure it doesn't happen again.

Mrs. Rector said if he is found in violation again and the Board chooses, they can have the attorney file suit. She said when they take him to court he can be fined up to \$300 a day for the violation. She said if it is not cleaned up the County Highway Department goes out and cleans it up and they put liens on the property. She said it is something that will be and can be taken care of. She said there is an end to it.

Mr. Fultz said it has been going on a long time.

Vicki Spaulding, 933 Pruden Drive, said she lives directly across from this property. She asked if by cleaning up do they mean the industrial size dumpster that sits 200' from her house will be gone and that the wood that is covered up by tarps will be gone. She said he has a building now that has junk all around and it is just covered by tarps. She said he burns plastic, from what they smell, she can't tell but it isn't wood. She asked if that is part of cleaning it up.

Guy Gentry said yes he needs to get everything inside the building or gone. He said everything outside must go inside or be gone and the dumpster gone too.

Jean McCleary, 988 Russell Road, said she is adjacent to this property and the wood pile Mrs. Spaulding mention lies onto her property and she wants to know if that will be moved off her property before the month is up.

Mr. Crickmer said that might be junk to them but there is a lot of stuff that is worth money to him. He said there are things sitting there that are not tarps over wood all around the building. He said he has a lot of stuff but it will be moved to the other site anyway.

Guy Gentry said it needs to be moved into the building and out of site or be gone.

Mr. Crickmer said if he has something he wants to keep he can't have it sitting outside; he can't have something sitting outside.

Guy Gentry said he isn't saying he can't keep an item or so out there; it depends on the point of it beginning to look trashy or if it is a business.

Mr. Crickmer said all the business stuff won't be there he just wanted to make sure.

Guy Gentry said other people have their boats outside or a lawnmower outside and he isn't saying he can't do that.

Brad Overton asked if would be possible for him to remove whatever is on the neighbor's property.

Mr. Crickmer said he doesn't believe it is on their property but he was planning on moving it anyway.

Jean McCleary asked if they could submit pictures of this property to the Board to which the President said they would become the property of the Board. (Copies on file)

The President asked if the Inspector has been to the property this month.

Mrs. Rector said he wasn't sent out for this meeting.

The remonstrators explained the photos and dates of when they were taken.

The President said they will send the Inspector out before the next meeting. He then stated there is a motion and second on the floor to withdraw the rezoning petition and that he will have the property cleaned up and back in compliance by the February meeting. The motion carried unanimously.

PC-R-13-03 – Petition of R.L. Investments by Richard Lamping, Pres. OWNER: Kenneth Flittner and Karen Flittner to rezone 0.46 acres (pt. parcel 5 Newburgh Plaza South Subdivision) located on the E side of South Plaza Dr. approximately 165' N of the intersection formed by South Plaza Dr. & Robin Hill Rd. from "C-1" Neighborhood Commercial to "C-4" General Commercial zoning district. *Complete legal on file. Advertised in the Boonville Standard January 3, 2013.*

Roger Lamping and Karen Flittner were present.

The President called for a staff report.

Mrs. Rector said they have submitted all except of the return receipts from certified mail of notice of this meeting to the adjacent property owners except for Wayne Ellis/Jeff Howell. She said they will need to submit the return receipt or unopened envelope when they receive it. She said this is a request to rezone a part of parcel 5 consisting of 0.46 acres from C-1 Neighborhood Commercial to C-4 General Commercial. She said there is no minimum lot requirement for commercial zoning and the Comprehensive Plan projects the area to be commercial. She said the property is currently vacant. She added the property to the north and south are zoned "C-1" with businesses; to the west is "C-4" being a church and to the east is zoned "R-2" South Broadview "A". She said there is no flood plain on the property and it fronts on South Plaza Drive. She said the applicants stated use is for a Commercial – single post frame storage building which is allowed in the proposed zoning. She said the people who are purchasing the property have indicated they want to build a personal storage warehouse on this lot which is why they have filed for this rezoning. She said a warehouse takes a "C-4" zoning.

The petitioner had nothing to add.

The President called for comments from the Board.

Rick Reid asked if they could just limit this to storage.

Guy Gentry said other things could go into "C-4".

Attorney Doll said they could conditionally approve it just for that if the applicant is willing.

Mrs. Rector said they didn't do a Use and Development Commitment; he did a straight "C-4" zoning and so there is no limitation on it as it is filed.

Guy Gentry asked exactly what he is proposing to put in.

Roger Lamping, R.L. Investments, said it is a pole barn for their personal use. He said there will not be a business run out of it.

Guy Gentry questioned the need for a zoning for a pole barn for personal use.

Mrs. Rector said a warehouse and the only time you can have a storage building without a principle building is in an Agriculture zoning. She said since this is a commercial zoning so for it to be a warehouse it has to be "C-4". She said once it is built it can be sold and then people could be charged to store things there.

Attorney Doll said whether it is a personal warehouse or a public warehouse it doesn't matter. He said the question is do they want all of the other permitted uses for a "C-4" there. He asked the petitioner if he objects if the Area Plan Commission conditionally approves the application limiting it only to a warehouse.

Roger Lamping said at this time they are not planning on a Use and Development Commitment.

Attorney Doll said he understands that but they can conditionally approve it. He said the petitioner can say they will only do.... or the Plan Commission can conditionally approve the application. He said that will say they approve the "C-4" but it can only be used as a warehouse. He said his question is does he object to that. He said once they do that they will have to come back to the Board for it to be used for any other "C-4" purpose and change it. He said anyone who owns it can have a warehouse but not anything else.

Mrs. Rector said so he is saying that since he didn't submit a rezoning that limits it...you can't approve a conditional zoning.

Attorney Doll said the Board can.

Mrs. Rector said she thought that conditional zonings, unless you had a Use and Development Commitment, was against the Statute.

Attorney Doll said if he agrees to it they can.

Mrs. Rector asked if what he is saying is Mr. Lamping would have to submit a Use and Development Commitment to go to the Commissioners.

Attorney Doll said he is asking if he agrees to them treating it as there is one tonight.

Mrs. Rector so he would have to agree to it and bring one in to them to take to the Commissioners but not come back here.

Attorney Doll said staff could prepare it.

Mrs. Rector said she knows that; she is trying to get to where they go with the next step.

Attorney Doll said if the applicants are acceptable to that then the Board can approve it tonight subject to that being filed. He said it could be prepared and they could sign it before it goes to the Commissioners as such. He said that is what he is proposing but his question to the applicant still is if they agreeable or not.

Mr. Lamping asked if he would say no then it goes as a straight up vote of yes or no. He said but if he says yes then he has to present a Use and Development Commitment.

Attorney Doll said it still goes to a vote tonight but they will vote conditioned upon that document being finished, signed and attached to the application and going to the Commissioner's February 11th meeting.

Mrs. Rector said if he keeps it as it is, the rezoning is forwarded to the Commissioners with a recommendation of approval or denial. She said if he can't get a majority vote then it goes with no recommendation.

Mike Moesner said essentially it is up to him to decide if he is willing to accept this limitation on this zoning.

Mr. Lamping said that is what their purpose is but he just doesn't believe....they don't know if they are ever going to build a building on it. He said they want the option to do that. He said they have no plans but being it is "C-4" across the street and "C-1" on each side of them and "C-2" (*R-2 really*) behind them he thinks that would throttle them a little bit for anything they would do in the future other than a storage building. He said he doesn't know ...that isn't what they are proposing to do.

Mrs. Rector said she thought he told her their plans were to build a warehouse there.

Mr. Lamping said if they ever build anything on that property that is exactly what it will be.

Guy Gentry said the "C-4" there is currently a church. He asked if there are any limitations on that.

Mrs. Rector said that used to be a restaurant and by the theater and the church moved into the building.

Guy Gentry said so that could also be anything in "C-4" at any time.

Ascertaining there were no other questions from the Board the President called for remonstrators.

Reva Dossett said she represents a homeowner whose property is adjacent to this property. She said their residence is behind this property and there are multifamily properties behind this property and so they are talking about a lot of kids and there is a school bus stop right there and kids get off the bus there. She said most of the people in the area were not aware of this; she got the message because she is POA for someone who is unable to do anything. She said she started knocking on doors asking if anyone knew what this was about and no one did. She said many people wanted to be here tonight but because of the late notice they weren't able to. She said there is a lot of concerns about what can go up there and they didn't know until just now what that could possibly be. She said a storage unit may not be as offensive as some other properties but they do know that some of the buildings that have gone up have caused increased drainage into the residential properties because it comes down hill. She said there have been power overages and her major concern is over the safety of the kids. She said that whole area behind it is kids. She asked that before they make any decision they give them more time to talk to the other residents about this because their property literally bumps against the back of this property. She said she is concerned if it is a storage unit there what would stop vagrants from getting in there. She said to her that would be a beautiful place for vagrants and druggies and kids to congregate. She said they had that problem with Time Warner and they put up a fence around their property to avoid that. She added that spot is awfully big for a storage warehouse and she would be concerned if somebody needs that big of a warehouse what are they putting in it. She said if it is personal she is really concerned about that. She asked again that the residents have an opportunity to look at it.

Brad Overton asked if they are only rezoning part of the parcel or all of it.

Mike Moesner said it is part of parcel five and it is .46 acre.

Attorney Doll said this is the middle lot between the old Benjamin Moore building on the north and the Time Warner building.

Discussion ensued over the location of the parcel.

Mrs. Flittner said she owns two lots (the northern and middle parcels). She said one lot has a building on it and this lot is vacant.

Mrs. Rector said parcel five has been split into three parcels and he is asking to rezone a portion of the lot.

Brad Overton said this is spot zoning and they don't know what is going in there.

Shannon Dossett said she grew up there and she knows as a child in that area that is an open field that invites people to go play. She said there is a Young Life group that uses the field quite a bit and whether it is privately owned or not it is used a lot. She said she knows the church uses it and the residents cut through the field to go to the grocery store. She said she is curious as to why they need such a huge area for a storage unit. She asked what is wrong with their own personal property, their own residential property for storage. She said there are a lot of drugs and illegal activities and this is inviting more trouble. She said there was an issue with Time Warner and they put a fence up but it didn't stop many people from breaking into the fence. She said fences and gates won't stop people from breaking in. She said this will invite people in and they will want to do drugs there and it will be another building to hide behind from the cops. She said right now is a huge, beautiful open field that a lot of people use. She said she wonders why they need such a huge area and if the building will be right up against the residential area. She asked how big the building was going to be and how it would affect the residents there. Mrs. Flittner said Young Life did use that lot with her permission and they kept it mowed and yes, people like to use it.

Guy Gentry asked if there are or are not specific plans to build on this lot.

Mr. Lamping said his Father has a house on Sharon Road; a large house with a large pole barn behind it. He said he has since moved very near this proposed location and the house on Sharon Road is up for sale. He said his Dad will need a place to store his RV and he likes to piddle in rocks and wood and things like that and they have some mowers and tractors that need to be stored. He said this location is very close to where he moved and it was a perfect location with commercial all the way around it. He said the property on Sharon Road is divided into two parcels and one has the house and the other the barn and if it sells separately he will still own the barn and the property on South Plaza Drive stays as it is. He said if they sell all of the property they will have to proceed with building on South Plaza Drive. He said the quick answer is right now there are no plans.

Guy Gentry said the Board's concern is for protection in the future and they are very reluctant to change zoning particularly to upgrade zoning without a proposal of what is going in there because it does open it up to absolutely everything in the "C-4" area. He said the Attorney did mention something about limiting some of those things and he thinks that would preclude a little bit of protection as to what may or may not go in there. He said he understands their point that it doesn't make it as profitable if it doesn't sell and they don't want to build and then sell it to someone else. He said they are looking at protection for the existing properties that are there right now as to what might be compatible with what can go in that area. He said without really knowing what it is, he is a little reluctant but that is his opinion.

Mr. Lamping says he understands and if that is what it takes that is what they will do but it is not a matter of profit; there will be no profit especially they are going to build it for their own use and there won't be a business ran out of it; it is more of a matter of principle than profit. He said they will sign the letter the attorney prepares if that is what it takes to get the job done but he thinks it is a matter more of principle. He said there is "C" all the way around it.

Guy Gentry said it currently is "C-1".

Mr. Lamping said it is "C-1" but they have "C-4" right across the street that happens to be a church but it used to be a bar. He said he thinks the church is an upgrade but they do have the Time Warner building beside them and there is a commercial building to the north of them. He said they have the "C-2" which is being used as multifamily. (*Property actually zoned R-2*) He said his point is a matter of is it right to make him do that. He said they will do it to get it done but he doesn't think it is right to make them do it to get it done.

Attorney Doll said it isn't just for his use; once the property is rezoned it is for the future as well because he could sell it to someone else who would want a more intensive use or even a "C-3" use. He said all kinds of things could go there.

Mr. Lamping said he understands that is for everybody from now forward but this same building could be built if they had a primary building and it would still be a "C-1". He said a lot of things that could be built in a "C-1".

Rick Reid asked if would accept it to be used as a warehouse for his personal use.

Mr. Lamping said if it was prepared by the Plan Commission.

Mr. Reid said he thinks they would feel better. He asked the remonstrators if they would feel better.

Mrs. Dossett said she would like the other residents to have some time for notice.

Guy Gentry said notice was sent out to the adjoining property owners which is what is required by law.

Mrs. Dossett said she understands that but the only resident that got notice was her 84 year old mother who is severely ill and you are talking about lot of children there. She said what is right is to give those people the opportunity to say...there is a storage unit going up there and they promise there will never be anything used for commercial, the storage unit will be personal only...she said there are kids that wander that area and how do they know it isn't going to turn into more. She said she thinks the residents have a right to know that. She said if he doesn't plan on building anything – he says he has no plans – why can't they postpone this for a month and give the other residents the opportunity to know what the intent is.

Mrs. Rector asked if it would be a Use and Development Commitment for a warehouse, period, not just his warehouse.

Attorney Doll said it is for a warehouse, period.

Mrs. Rector said they keep saying personal and she wants to be clear.

Attorney Doll said he can put his own stuff in it or he could rent to someone else to put their stuff in it; it is a permitted use in a “C-4” zoning. He said he is not advocating it be a private warehouse.

Jeff Valiant asked what uses could go in a “C-1” zoning.

Attorney Doll read the permitted uses in a “C-1” zoning.

Jeff Valiant said so right now Mr. Lamping could put any of those things in there, including a liquor store.

Mr. Lamping said he won't threaten them and there won't be a liquor store going in there if they don't approve it.

Ascertaining there were no other questions from the Board, the President call for a motion. He asked if they need to make a motion to allow the amendment.

Mrs. Rector asked if that is what Mr. Lamping has agreed to.

Mr. Lamping said yes.

Rick Reid made a motion for PC-R-13-03 to be approved to “C-4” General Commercial with the stipulation that it only be used for warehouse use only by agreement of the applicant. The motion was seconded by Mike Moesner.

Brad Overton voted against the motion and all others voted for the motion, therefore the motion carried.

Bard Overton said the only reason he voted against the motion is because he is not a fan of spot zoning.

Mrs. Rector said staff will prepare the document and he can call in a couple of days to pick it up.

OTHER BUSINESS:

VECTREN EASEMENT ~ Perry Cloyd, PS, Manager, Encroachment Program ~ 200 S. Plank Road ~ Structure in easement without permit ~ *Con't from December 17, 2012, Request to continue.*

Mrs. Rector said they should have a copy of his request to continue in their packets. She said Mr. Cloyd doesn't ask for a specific amount of time and they are trying to work things out. She asked Attorney Doll if they should just wait until he contacts them again.

Attorney Doll said they should remove him from the docket pending a request to resubmit.

Brad Overton made a motion to remove this item from the agenda until such time he requests to be placed back on the agenda. The motion was seconded by Jeff Valiant and unanimously carried.

Formal Complaint ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage ~ Progress Report.

Mrs. Rector said they have submitted a report saying they picked up 635 tires and hauled away 1,654 tires and so the total of removed tires is 1,019. She said she said they have until May or June from the State.

Guy Gentry said there are still a lot of tires out there.

Jeff Valiant said to be honest it looks worse that it has in a few months. He said he thinks that is because of the weather and the holidays.

Mrs. Rector said it looks like they have slowed down from what they were doing.

Guy Gentry said it probably will more so with as cold as it is getting and they never did get the other shredder going.

Jeff Valiant said it is still sitting on the dock covered up with a tarp.

Formal Compliant ~ Matt Quick ~ 1799 Metzger Road ~ OWNER OF RECORD: April Duncan ~ Junk Salvage Yard in an "A" Agriculture zoning district. Cease and Desist Notice and Notice to Appear sent 10/9/12. *On 11/13/12 Board granted until 1/11/13 to clean up property.*

Matt Quick was present.

The President called for a staff report.

Mrs. Rector reminded the Board the history of the complaint and that Mr. Quick appeared before the Board on November 14, 2012 and was given until January 11, 2013 to have the property cleaned up. She said the Zoning Inspector went to the property on January 11, 2013 and reported *he did not see much progress being made on the cleanup; it looked pretty much like it did the last time he inspected the property*. She added the photos have been included in your packets. Mrs. Rector said she looked at the old pictures and the new pictures and she can see a lot of stuff still remaining but she does see that some things have been cleaned up around the mobile home. She so he has done some things but there is still a lot to go.

Matt Quick said his oldest son's bobcat has a broken cable and he ordered the part and it took a while to get the part in and now there is a lot of mud.

Guy Gentry asked if there has been anything new brought in.

Mr. Quick said no, well one refrigerator that he was going to use in the house but it isn't any good. He said the people said it was good but it isn't.

Mrs. Rector said she sees the refrigerator in the pictures.

Mr. Quick said he has done a lot out there.

Dan Wolfe asked if he can speak.

The President said as long as there were no other questions from the Board.

Dan Wolfe said he doesn't think Matt understood at the last meeting. He said he thinks it was Mr. Gentry who said the best thing he could do is not haul anything back out there and if he has a trash route to take it to the dump not to his house. He said he thinks they need to bring that back up again.

Guy Gentry asked if he has brought in other things besides the refrigerator.

Dan Wolfe said he has tried some but this has been since September and he is trying to expand his trash route. He said he thought it was pretty clear at the last meeting that he shouldn't haul it back to his house.

Matt Quick said today he picked up a bunch of stuff out of the yard.

Guy Gentry said he sees a lot of stuff loaded in the truck. He asked if they have hauled any off.

Matt Quick said yeah, the black truck was his son's truck and the other truck is his. He said he tried to get his son to come up here but he wouldn't come.

Guy Gentry said it looks like it is loaded and ready to go, so when is it going.

Mr. Quick said the black truck has been dumped.

Mrs. Rector said he is looking at older pictures. She said the smaller pictures are from today. She said the Zoning Inspector needs to take the same shots each time because it is hard to tell what has been done if they are at different angles.

The President asked for the Board's recommendation.

Brad Overton asked if he is still conducting the trash hauling business.

Mr. Quick said his son has it, not him.

Guy Gentry said is the son bringing it back to the property.

Mr. Quick said when it gets late at night; the dumps are closed and he has to bring it somewhere.

Guy Gentry asked if it leaves the next morning.

Mr. Quick said it leaves the next morning.

Dan Wolfe said he knows what the problem is; they all know what the problem is. He said before he is tired of it and is not picking up any more trash.

Mr. Quick said he has been picking it up himself.

Dan Wolfe said when you sit and look at pictures you really can't judge and you don't really know. He said what does that tell you.

Mrs. Rector asked if the property is still in his wife's name.

Mr. Quick said she was his girlfriend, she never was his wife.

Attorney Doll said so he just lives there.

Mrs. Rector said the son was supposed to stop running the trash hauling business and he isn't here.

Mr. Quick said he wouldn't come up here.

Mike Moesner asked if he realizes that if they decide to send the County out there to start picking all this stuff up he will have a big bill.

Mr. Quick said it is all picked up except some wood in the back.

Mike Moesner said his picture doesn't look like a lot of stuff has been picked up. He said it doesn't look like much progress and this picture was taken January 11th.

Mr. Quick there is some pictures of plywood but his son is going to build a porch for a church.

Discussion ensued over what was on the property.

Mike Moesner said he has to understand what they are looking at here and they have people complaining because it doesn't look good to them.

Mrs. Rector said to her they would need an "M-3" Solid Waste Disposal zoning to bring the trash to the property and go through it to recycle it. She said they are running a business.

Attorney Doll said that is the only zoning category that fits.

Discussion ensued that the zoning would probably not go through.

Attorney Doll said they would also have to get the signature of the deeded landowner as well to make the application.

Discussion ensued if he knew how to contact the owner with Mr. Quick saying he has her sister's address but he doesn't mess with her.

Mike Moesner asked if she realizes that her name is on the line and she is going to be responsible if he doesn't ...

Mrs. Rector said they have never been able to get hold of her at all; she left no forwarding address according to the post office.

Mike Moesner asked where that puts them as far as the County...what is their alternative if they can't locate the landowner.

Attorney Doll said he can publish notice when he files the lawsuit if they want him to do that.

Mr. Quick said if they give him some more time he will clean some more of it up.

Attorney Doll said all he has to do is publish the notice in the Boonville Paper. He said that is deemed to be valid notification. He said if it takes a court order to get this done he will go to court next week if that is the wishes of the Board.

Guy Gentry asked what leverage they have on Mr. Quick.

Attorney Doll said he isn't sure, quite frankly, if he has a right to be on the property; he doesn't own it and he doesn't have a lease. He said he would be characterized under the law as a squatter.

Mr. Quick asked even if he makes the bank payment.

Attorney Doll said he doesn't own the property and he can't prove he has permission of the lady whose name is on the deed to be there. He said he needs to fix that problem if he is making the bank payments.

Dan Wolfe said the son knows where his mother is.

Mr. Quick said he does if he can get hold of him.

Dan Wolfe said he thought he had the trash route.

Mr. Quick said he does but he won't answer his phone.

Dan Wolfe said he is coming out to the house to get the truck to haul the trash but he doesn't see him out there.

Mr. Quick said he doesn't see him.

Rick Reid asked Mr. Wolfe he has a number for the lady.

Mr. Wolfe said he doesn't know it.

Guy Gentry asked what legal recourse they might have.

Attorney Doll said part of what they get in every case they file is a restraining order in which the Judge at the conclusion, besides fining up to \$300 per day, issues a restraining order which says no one can operate a junk yard at this particular location any more. He said that applies to everybody in the world not just Mr. Quick and the lady who owns the property but everybody. He said if that violation occurs then they would be in contempt of court at which point in time the Sheriff gets to visit them.

Dan Wolfe said Matt can solve the problem by cleaning up the trash and owning up that he is hauling the trash and not bring it home-take it to the dump.

Mr. Quick said he brought the bobcat over so he could get the stuff cleaned up but it broke and then the storms came and now it is wet.

Brad Overton said the issue is not just what is currently on the property but it is the fact that he is continuing to bring stuff in.

Dan Wolfe said but he denies he is doing it.

Guy Gentry said he understands there may be times that the landfill may be closed when they get done working but that is when the vehicle needs to be left at that location and go back the next morning to pick it up and take it to the landfill; it can't be brought back to the house. He said they are operating a business when they do that.

Attorney Doll said it seems to him the question before the Board is do they want to give him more time to see if this gets better or do they want to make a decision tonight as to enforcement.

Dan Wolfe said he will help Matt out – if he will own up to it and take responsibility he would be willing to give it another month. He said he is still denying that he is doing it.

Mr. Quick said he said he would clean it up.

Dan Wolfe said the trash hauling...

Mr. Quick said he said he would clean it up and he has been.

Mrs. Rector said at the last meeting he said he wasn't running a business and then his son said he was and then they both said they were.

Mr. Quick said he is cleaning it up.

Mrs. Rector said she is talking about the trash hauling business. She said they have two issues; he needs to clean the yard up and stop the business.

Guy Gentry said he was very clear the last time; he thought he was and Mr. Wolfe thought he was. He said obviously Mr. Quick didn't think he was and so here is his motion tonight, he doesn't care how muddy it is, it is to be cleaned up by next month and if it isn't he doesn't even need to come to the meeting because they will send out the Inspector and if it isn't cleaned up he asks the Attorney to file legal course in order to clean it up. He said if that involves moving him off the property because he is an illegal squatter or whatever they determine that is up to the Court too. The motion was seconded by Brad Overton.

Attorney Doll said that only addresses the cleanup; it doesn't address the continued operation of the business.

Guy Gentry said his motion includes there is no operation of a business what so ever from that property, period, from tonight forward. He asked if Mr. Quick understands.

Mr. Quick indicated he did.

Brad Overton amended his second and the motion carried unanimously.

ZONING DETERMINATIONS – *Con't from November 13, 2012 and December 17, 2012.
Continue to February 11, 2013.*

Winery
Domesticated animals

The President said these items will be continued to next month.

ATTORNEY BUSINESS:

Attorney Doll said they couldn't find on the record where they made a motion to sue Don Adams last month.

Mrs. Rector said it has been cleaned up now; she said he has four cars there now. She said the four cars change but he only has four and he said at the meeting he had four cars.

Brad Overton asked if the work vehicle (tow truck) is parked there.

Mrs. Rector said last month there was thirteen cars and then down to nine.

Attorney Doll asked if they do or don't want to sue Mr. Adams.

Mrs. Rector said there were four cars there this morning.

Attorney Doll asked about the zoning to which Mrs. Rector said it is Agriculture.

Attorney Doll said it is the same thing as they just had in front of them.

Mr. Gentry said except the vehicles are neater.

Mrs. Rector said if they remember he withdrew his rezoning and said he was going to move everything to Evansville. She said she would have sworn they said to bring suit at last meeting and they made Morrie the copies of everything but it wasn't on the recording.

Attorney Doll said he started working on it but there wasn't a motion, there was an agreement but no motion.

Discussion ensued over the history of the property and the withdrawn rezoning petition.

Mrs. Rector said he was found in violation and so they didn't have to find him in violation again. She said he tried to rezone and withdrew it and now he is starting it again. She said this morning there was only four cars there.

Mike Moesner asked what they have to do – make a surprise visit next week and see.

Mrs. Rector said she would bet the wreckers are going in the garage at night too.

Guy Gentry said there was a bunch of vehicles there in December and now they are at four. He asked if they want to sit on it for another month and watch it or do they want to take action.

Brad Overton said if the Inspector goes out he is going to have to go more than once. He would have to go out at least once a week.

Mrs. Rector said he is past there about every day.

Guy Gentry said he isn't supposed to be bringing anything there; he moved his business, and so he is technically still in violation but at what point do they want to say anything.

Mike Moesner said if the Inspector goes out next week and there are five or six cars there what do they do. He said should they just tell the Attorney that if the Inspector finds that to go ahead and file papers.

Jeff Valiant said with the four vehicles there right now he is in violation and he made a motion they take care of it now. The motion was seconded by Brad Overton.

The President said there is a motion and second on the floor to follow through with making sure Mr. Adams no longer runs his business being he pulled his application.

Attorney Doll said which is code for suing.

The President answered yes, and then called for a vote.

The motion unanimously carried.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 8:45 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director